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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 700

THE UNITED STATES, PETITIONER,

vs.

THE CAMBRIDGE LOAN & BUILDING COMPANY.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

The jurisdiction of this Court, the issues and the statutes involved are correctly set forth in the petitioner's brief.

Statement.

The respondent brought suit in the Court of Claims to recover income taxes it was required to pay simultaneously for the several years 1918 to 1923, inclusive, contending that it was, during the years 1918, 1919,

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CLERK

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No. [redacted] 46

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vs.

THE CAMBRIDGE LOAN & BUILDING COMPANY.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

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1920, and until November 23, 1921, the date of the passage of the Revenue Act of 1921, a domestic building and loan association within the purview and meaning of the Revenue Act of 1918, which was in force during that entire period; and it contended that, subsequent to November 23, 1921, for the years 1922 and 1923, which are controlled by the provisions of the Revenue Act of 1921, it was a domestic building and loan association, substantially all of whose business was confined to making loans to its members.

There are thus two separate acts of Congress to be interpreted. Respondent claims that under both these acts it was exempt from the payment of income taxes. The Government contends that the respondent was not a domestic building and loan association during any of these years.

The respondent has been engaged exclusively in the business of a building and loan association in the State of Ohio for the past forty-two years, without interruption, and has regularly since the creation of the office of the Superintendent of Building and Loan Associations in the State of Ohio, in the year 1891, filed its reports annually and was annually inspected by that officer, and at all times found to be complying with all the laws of the State of Ohio in respect of the carrying on of the business of a building and loan association. Not until September 18, 1924, did the Commissioner of Internal Revenue attempt to assess against the respondent income taxes and on that date he made assessment of income taxes against respondent retrospectively for each of the years 1918 to 1923, inclusive.

The facts are very fully and clearly set forth in the findings of fact of the Court of Claims, which include every material fact necessary to determination of this case. There has been some complaint of these facts in the petitioner's brief; however, it will presently be seen that the minor objections of petitioner in respect of the findings of fact by the Court of Claims are unimportant and do not affect the real issues involved.

The only questions in this case involve statutory interpretation and may be briefly stated thus: In respect of the Revenue Act of 1918, which governs the right of respondent to exemption during several of the years under consideration, did Congress intend to exempt from income taxes *bona fide* building and loan associations organized and operated under and in conformity with the laws of the several States? by virtue of which, alone, they exist; and in respect of the 1921 Act, did Congress intend that these same building and loan associations shall be exempt from income tax provided after the passage of that act they confined their business substantially to making loans only to their members? The respondent contends that this was the intention of Congress, and the Court of Claims has sustained its contention. The Government claims that under these two statutes the Commissioner of Internal Revenue was delegated with authority by Congress to determine, and that succeeding Commissioners of Internal Revenue should have the right to determine, in accordance with their own individual conceptions or caprices, whether a building and loan association organized, created and doing business in good faith, in

conformity with the only laws which define and permit its existence, is not a building and loan association. The issues thus raised are sharp and well defined and require only the application of the rules of statutory interpretation for their solution.

ARGUMENT.

This Court has aptly observed that "a page of history is worth a volume of logic" in construing the terms of a statute, and has laid down accordingly the following cardinal principles:

(1) Courts must take notice of the history of legislation, and, of different possible constructions, select and apply the one that best comports with the genius of our institutions, and therefore most likely to have been the construction intended by the law-making power (Texas & P. R. Co. vs. Interstate Commerce Commission, 162 U. S., 197).

(2) In construing a statute, courts may recur to the history of the times when it was passed in order to ascertain the reason for its passage, as well as the meaning of its provisions (Platt vs. Union P. R. Co., 99 U. S., 48; U. S. vs. Union P. R. Co., 91 U. S., 72).

(3) Where the language of the statute is in any manner ambiguous, or the meaning doubtful, resort may be had to the surrounding circumstances, the history of the times and the defect or mischief which the statute was intended to remedy (Smith vs. Townsend, 148 U. S., 490).

In order to determine whether the Court of Claims has grossly erred in its interpretation of these statutes and accordingly the propriety or necessity of reviewing its judgment, it should only be necessary to consider, in conjunction with the language of the statutes, the history of the legislation relating to the exemption of these associations up to the time of the passage of the Revenue Acts of 1918 and 1921, and the executive construction and judicial interpretation of prior statutes in *pari materia*.

History of the Legislation, the Previous Statutes in Pari Materia and the Executive Construction and Judicial Interpretation Thereof.

The present system of taxation can be said to have had its inception with the passage of the Act of 1909, since which there have been successively enacted the Act of 1913, the Act of 1916, the Act of 1918 and the Act of 1921, all relating specifically to the identical subject matter now under consideration.

The Act of August 5, 1909 (36 Stat. L., 113-118), provides at Section 38:

> "That nothing in this section contained shall apply * * * to domestic building and loan associations *organized and operated exclusively for the benefit of their members*, * * *" (Italic letters supplied.)

Under the provisions of this act a large number of building and loan associations in Ohio were taxed, resulting in the institution of several suits,

namely, Park View Building & Loan Association *v.* Herold, 203 Fed., 876; Herold *v.* Park View Building & Loan Association, 210 Fed., 577; Bellefontaine Building & Loan Co. *v.* McMaken, 216 Fed., 526; Central Building, Loan & Savings Co. *v.* Bowland, 216 Fed., 526. Under all of these decisions interpreting the provisions of the 1909 Act, which restricted exemption of domestic building and loan associations to those which were *organized and operated exclusively for the mutual benefit of their members*, every decision was in favor of exemption of the building and loan associations, it being held that the making of loans to nonmembers and the accepting of deposits from them (for which they were taxed) did not affect the mutuality of the members, since no nonmember and no depositor who was not a member received any of the earnings of the association, which were exclusively divided among the members.

The next legislation was the Act of October 3, 1913 (38 Stat. L., 144, 172), wherein it was provided:

> "(G (a)) Provided, however, that nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such society, orders, or associations and dependents of such members, *nor to domes-*

tic building and loan associations, nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, nor to business leagues, nor to chambers of commerce or boards of trade, not organized for profit, or no part of the net income of which inures to the benefit of the private stockholder or individual; nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare." (Italic letters supplied.)

When the 1913 Act was introduced in the House of Representatives the exact language of the 1909 Act was incorporated, restricting exemption as before to associations *organized and operated exclusively for the mutual benefit of their members*. (H. R. 3321, Apr. 1, 1913; Sec. II (G1)). On May 8, 1913, the day the bill was passed by the House, the restricting clause was deliberately stricken out, and as stricken out the bill was passed by the Senate, so that the act provided that nothing therein should apply to "domestic building and loan associations."

No building and loan associations were required to file returns under this act, which was in force until September 8, 1916, when the Revenue Act of 1916 was passed, and no taxes were assessed or collected thereunder.

The next legislation was the Revenue Act of September 8, 1916 (39 Stat., 766), wherein it was provided:

> "SECTION II (*a*) That there shall not be taxed under this Title any income received by any—
> "(4) *Domestic building and loan associations* and cooperative banks without capital stock organized and operated for mutual purposes and without profit." (Italic letters supplied.)

The 1916 Act began with the introduction of H. R. 16763, 64th Cong., 1st Session, wherein at Section XI (*a*) provision was made for the exemption of "domestic building and loan associations," being a re-enactment of the 1913 Act. After the bill reached the Senate an amendment was proposed known as Amendment No. 65 (see Conf. Rep., p. 29). There we find the following statement in the report of the conferees of the Senate and House:

> "The Senate amendment provides that the income of *co-operative banks organized and operated for mutual purposes and without benefit* shall be exempted from the income tax provision. The House recedes from its disagreement to the Senate amendment with an amendment exempting *co-operative banks without capital stock organization and operated for mutual purposes and without profit.*" (See Book No. H. H. J. 2379, A. 4, 1916, Congressional Library.)

No effort, as stated, was made to subject any building and loan association to income taxes under the 1913 Act at any time, and no effort was made to sub-

ject building and loan associations to income taxes under the 1916 Act, which was in force until February 24, 1919, when the Revenue Act of 1918 was passed. The Act of October 3, 1917, made no change in respect of exemption of building and loan associations but merely increased the rates of income taxes of individuals and corporations subject to the tax, as well as the rates of Federal estate taxes.

After Congress had passed the 1916 Act in September of that year we find that on February 26, 1917, Congress passed a special act (Chap. 129) which directed the Secretary of the Treasury to pay to the several building and loan associations therein named the sums set forth therein, the same to be a refund of taxes "*illegally collected* from said associations under the *Excise Tax Act of August 5, 1909.*" This act was to enable all associations from whom taxes had been exacted under the early 1909 Act, where the statute of limitations had tolled against refund claims, to recover all such taxes. All other associations against whom such taxes had been collected had already received refunds as a result of the court decisions referred to. Regulations promulgated by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury under the 1916 Act, at all times that it was in force, provided, at Article 68, Reg. 33, that building and loan associations organized and operated under the laws of any of the States of the United States are exempt under the provisions of Section 11 (*a*) of the Revenue Act of 1916.

Article 68 of Regulations 33, promulgated under the 1916 Act, relating to exemption, is headed "Unconditional," and states as follows:

> "Among the corporations exempt from the tax, without condition, are * * * domestic building and loan associations * * *."

The foregoing is the history of the legislation and of the judicial interpretation and executive construction thereof at the time the Congress on February 24, 1919, passed the Revenue Act of 1918, re-enacting without change the provisions of the 1916 Act relating to the exemption of these associations.

The Revenue Act of 1918 (40 Stat., 1073) provided:

> "SECTION 231. That the following organizations shall be exempt from taxation under this Title:
>
> "(4) *Domestic building and loan associations* and co-operative banks without capital stock organized and operated for mutual purposes and without profit."

No returns were filed by and no taxes assessed against building and loan associations under this act so long as it was in effect, it having been superseded by the Revenue Act of 1921, enacted November 23, 1921.

And now, so it is that the Commissioner of Internal Revenue in retrospectively assessing in the year 1924 taxes against respondent for the years prior to the passage of the 1921 Act, namely, for the years 1918 to

1921, pretends that the Congress did not intend to exempt these associations under the provisions of the 1909 Act or the 1913 Act or the 1916 Act, or the 1918 Act; that the successive re-enactment of this exemption provision over a period of 12 years was not intended as an adoption of the previous executive construction and judicial interpretation of prior acts; that he is not in any manner bound thereby; and that what the Congress intended and meant all along was to exempt only such associations as might come within the exemption provisions of the 1921 Act subsequently enacted and necessarily not theretofore in existence. Surely he is not aware of the oft-repeated ruling of this Court that the meaning of a particular statute should be determined in the light of prior acts in *pari materia* that have been interpreted and construed (U. S. *v.* Saunders, 22 Wall., 492; U. S. *v.* Farden, 99 U. S., 10; Vane *v.* Newcombe, 132 U. S., 220; U. S. *v.* Central P. R. Co., 118 U. S., 235; The Aurora *v.* U. S., 70 Cranch, 382).

Clearly, the 1918 Act and its predecessors are dead issues and cannot be revived at this late date by an attempt of the Internal Revenue Commissioner to place an interpretation thereon directly contrary to the intention of Congress, which has repeatedly re-enacted this statute in the light of prior executive construction and judicial interpretation of statutes in *pari materia*.

This brings us to the 1921 Act, but, before passing on, it may be well to refer to the eminent authority, Judge Endlich, whose reasoning in his work on Building and Loan Associations is in true accord with the

decisions of the Federal courts, *supra*, interpreting the stringent provisions of the 1969 Act. We find at Section 313 of this work, written in 1882, the following:

> "It is said in Pennsylvania, and in Ohio, and seems to be the understanding of the law in Indiana, in Kansas, and in Massachusetts, that a building association has the power of lending its money to members only, and not to strangers. *It must be admitted that there is nothing in the reason or constitution of building associations to favor of the doctrine. On the contrary, although it undoubtedly was their design that eventually all the members should become borrowers, in practice there is always a large portion of them who content themselves with paying, and never think of drawing out. Thus, if none but members may receive loans, the funds of the society may go begging; it may be subjected to constant losses on account of their lying idle; and the very end aimed at by the association, the speedy and profitable winding up, be delayed by a restraint as unreasonable as the license is harmless. Yet, in the absence of special statutory authority giving that license, the doctrine denying it to building associations must be held to be established by authority.*" (Italic letters supplied.)

Singular it is, the author refers to the fact that at the time of writing (1882) the State of Ohio and five other States did not permit these things, but the author states that whether or not an association may engage in this further activity *depends upon the State statute*. However, as early as 1908, the State of Ohio by legis-

lative enactment specifically authorized these associations to accept deposits from and make loans to non-members, and it is still the law. (See Ohio statute cited in the opinion of the Court of Claims, Rec., 10.) All modern authors writing on the subject are in accord with Judge Endlich.

The 1921 Act.

But, on November 23, 1921, Congress decided to no longer exempt these associations as they existed unless thereafter they confine their loans substantially to their members. Thus, when the 1921 Act was passed, Congress then decided to exempt the same associations which had been exempted from tax under every prior income-tax law, but placed one restriction upon that exemption, and that restriction was that these associations, to be exempt in the future, must confine their business to making loans to members. In all other particulars and in all other respects Congress adopted the interpretation of the previous acts. It did not see fit to place any further restrictions upon them, such as prohibiting them from accepting deposits or requiring borrowers to subscribe to stock to the full amount of the loans, or to direct how they shall operate or conduct their business, or to in any way interfere with the common practice existing among the associations in the various States other than in respect of the persons to whom they may make loans. The interpretation, therefore, of the 1921 Act becomes rather simple and requires only a practical determination of the extent to which these associations, after the

passage of the 1921 Act, may indulge in making loans to nonmembers if they would retain their right to exemption.

The Court of Claims has held that respondent, subsequent to the passage of the 1921 Act, has substantially complied with its provisions. Has it committed gross error? Is its judgment unsound or its conclusions illogical? If not, its decision needs no review.

There are only two years (1922 and 1923) involved herein which are controlled by the provisions of the 1921 Act. Bearing in mind that this act was only five weeks before the year 1922, and that its numerous provisions are not at once broadcast among the people of the cities, towns, and hamlets of the country, let us see what the facts are as found by the court.

During the year 1922 the record shows (p. 10) that the respondent made 225 separate loans, of which 180 of them were to its members in the aggregate amount of $209,960.35, and it made 45 loans to those who were not members in the aggregate amount of $113,530. In respect of the number of loans made, 80 per cent of them were to members and 20 per cent to those who were not members. In respect of the amount of money loaned, 70 per cent of it was loaned to members and 30 per cent to nonmembers. It should be noted, however, in Finding IX (Rec., 11), that at no time did the respondent lend money to a nonmember in preference to a member, and therefore, if it had a pre-existing surplus of funds on hand, the amount of so called loans to others than members constituted little more than an investment of such surplus funds, which investment

only accrued for the benefit of the members, who alone received dividends on the earnings of the association. Petitioner contends that too large an *amount of money* was loaned to nonmembers during this one year, but the amount of money is not the only consideration necessary to determine the ultimate question of fact. Surely, if the association had made one loan to a member in the amount of $250,000, and 100 loans to persons who were not members, in the aggregate amount of $20,000, it would scarcely be correct to say that thus, because 93 per cent of the *money* which it loaned was to a member of the association, it confined its business substantially to making loans to its members, since 99 per cent of the loans which it made were to nonmembers. The question simply involves a practical consideration, bearing in mind the circumstances and necessities of the association upon the advent of the new act, and if it has not grossly overstepped the bounds of a practical interpretation of the statute, it should not be denied exemption for this one year. It seems clear that respondent has quite substantially complied with the statute.

The word "substantially," used in the 1921 Act in respect of the making of loans to members, has been defined in "Words and Phrases, 2d Series, Vol. 4, page 753," as follows:

> "'Substantially' means in substance; in the main; essential; by including the material or essential part. See Town of Checotah *v.s.* Town of Eufala, 110 Pac., 1014, 1019; Vannest *v.s.* Murphy, 112 N. W., 236, 238; 135 Iowa, 123. See also Electric Candy Machine Co. *v.s.* Morris, 156

Fed., 972, 974; Eisfeld *vs.* Kenworth, 50 Iowa, 389, 390."

In the case of South Penn Oil Co. *vs.* Knox, 69 S. E., 1020, 1021; 68 W. Va., 362, there was involved an oil and gas lease, describing the premises as being all that certain tract of land situated in a certain district of the waters of a designated stream bounded "substantially" as follows, etc. The court held that the word "substantially" there was intended to mean "about" or "in the main," as designated, and not "wholly" or "completely."

Surely, since 80 per cent of all of its loans was to members and 70 per cent of all its money loaned was to members, there was a substantial compliance with the exemption provision.

Let us now see what were the facts, as found by the court for the year 1923.

During the year 1923 (Finding VIII, Rec., 10) there were 301 separate loans made, of which 272 were to members in the aggregate amount of $69,111.98 and 29 loans were made to others than members in the aggregate amount of $10,545. Thus, in respect of the number of loans made, 90 per cent of them were to members, and in respect of the amount of *money* loaned during the year *more than 86 per cent* was to members.

A review of the record of the facts in this case shows beyond any question of doubt that the respondent, which had been doing business as a building and loan association for forty-five years, was in fact and in truth a *bona fide* domestic building and loan association and has substantially complied with the provisions of law in respect of its exemption during the en-

tire period involved. There seems to be nothing to construe and no error to review.

It is now only necessary to briefly advert to a few statements contained in the petition and the brief of petitioner respecting the amount of money involved and some minor complaints regarding the findings of fact made by the court below and a few observations concerning the reasons assigned by petitioner to support the granting of the writ in this case.

The Amount Involved.

Although it is not to be found in the record of this case, petitioner has informed this Court that if the judgment of the Court of Claims is allowed to stand, the Government may have to refund approximately $2,500,000 of taxes which it deliberately collected retrospectively going back over a period of nearly ten years from the present date and nearly twelve years since the passage of the Revenue Act of 1916. Petitioner states that there are about 1,300 associations which have not yet been exempted, but does not state from how many of these taxes have been collected retrospectively. A stipulation was filed in the court below at the request of the Government wherein it appeared that there were 11,369 building and loan associations in the United States, of which 10,060 have been exempted by the Commissioner of Internal Revenue.

If the total amount which has been collected covering the alleged liability since 1918 (a period of nearly ten years), has been $2,500,000, it indicates that the annual taxes of all kinds collected from building and loan associations throughout the United States have

amounted to $250,000. It is not only doubtful but certain that Congress has not seen fit to adopt a taxing measure which would produce no more revenue for the support of the Government than $250,000 a year. There is not a single item involved in any of the taxing acts designed to produce a revenue so small as this.

The record thus called to the attention of this Court at the instance of the petitioner seems to be a complete justification of the wisdom of Congress in exempting these associations as they existed in this country in the various States. The exemption, of course, is the exemption of a class of institutions. It confirms the judgment of Congress in assuming that the various States were as much, if not more, interested in preserving and perpetuating the integrity and worthiness of these local institutions as the Federal Government could possibly be, and that no mistake would be made in thus exempting them from taxation. The record proves nothing else.

This Court, of course, has not been informed of the basis upon which the amount involved has been either assessed or collected and it is interesting, if not curious, to note the basis upon which the Internal Revenue Bureau has considered exemption of some of these associations against whom it has either assessed or collected these taxes.

In Cumulative Bulletin III 2, at page 260, the Commissioner states that an association which accepts deposits from nonmembers and makes loans to nominal shareholders is entitled to exemption from taxation when the rate of interest it charges to borrowing members is not exceeded by the rate of dividends paid

to non-borrowing shareholders and it compares favorably with and only slightly exceeds the rate of interest paid to depositors.

In a very recent case, Cumulative Bulletin V-1, at page 291, the Commissioner states that an association which does not inquire and make certain the use to which the borrowing member intends to devote the money loaned to him is not entitled to exemption and that the positive statement by the association that 95 per cent of its loans were for the purpose of acquiring homes is not to be considered. In other words, the association must absolutely know that the loan it has made to its member which it has no power to control is going to be used for the purpose of building a home. This is beyond the requirement laid down by any textbook writer or any court in the United States.

From the foregoing rulings made by the Department it is impossible to determine the basis of either the exemption or nonexemption of the various associations which may be included within this gross statement reflecting the beneficence of the Department in the granting of exemptions. It is obvious, however, that none of them has been given the benefit of the slightest doubt under the strict legislative interpretation of the Treasury Department.

These rulings were clearly in derogation of the provisions of the statute; are purely legislative in character; and directly contrary to the established law as laid down by all modern authors on building and loan associations.

In 9 C. J., 954, Sec. 70, we find it stated that a building and loan association, unless restricted by statute,

may lend its money for other purposes than building purposes, and it is not required to ascertain the use to which a borrowing member intends to apply the money.

In Sundheim on Building & Loan Associations, 2d Ed., page 20, it is stated that a building and loan association may lend its money for the purchase of real estate or for any lawful purpose or business. As far back as 1859, in the case of Juniata Building & Loan Association *vs.* Mixwell, 84 Pa., 313, it was held that a building association need not inquire for what purpose a loan is obtained or what use will be made of the money.

On page 22 of the work above cited we find the following:

> "The borrower may, if he so desire, build a house with the money advanced, or he may use it in any trade or business. The association merely loans or advances the money and the use to which it is put is none of its concern."

On page 24 of the same work the author speaks of these associations as follows:

> "They have grown to such an extent in recent years that they no longer restrict their money to the home buyer, but loan their money to the mere investor or dealer in real estate. They are the holders of large mortgages secured upon farms, factories and other business property and rows of stores and dwellings. This is not an abuse of their powers or a departure from their main purpose, but of course a natural and proper expansion along healthy and legitimate lines. All legislation in recent years has been to enlarge

and broaden their powers, not to confine and restrict them. The courts have been liberal in the construction of these especially delegated powers, and as the result they have grown and changed as conditions required."

Again, on page 112, Sec. 111, the same author states:

"Loans are made for the purpose of purchasing a homestead or other real estate, or for any lawful purpose or business, but there is no duty or obligation of the association to inquire for what purpose the loan is obtained or to require any stipulation from the borrower as to what use he will make of the money, or in any manner to supervise or control its disbursement."

Considering the manner in which it was done and the fact that it includes not only income taxes collected but capital stock taxes as well, what has the amount involved to do with this case?

Petitioner's Objections to the Court's Findings.

Petitioner criticizes the Court of Claims for not including in the category of loans made to non members during the years controlled by the 1918 Act the small amount of first mortgages on real estate purchased by respondent out of its funds for the benefit of its members. These mortgages were not loans which this association made and for which a mortgage was given to it. The loan was made by some other institution or some individual and the mortgage given to him. The security being first class and the interest a good investment, the association simply purchased that mortgage from the mortgagee who assigned it to the asso-

ciation. It would indeed be anomalous to call that a loan made by the association. Petitioner only desired to include these mortgages in an effort to swell the percentage of loans, and its request was fairly excluded.

Petitioner complains that the court below did not find, in respect of the years covered by the 1918 Act, the number of depositors as compared with the number of stockholders. Such a finding is wholly immaterial and has nothing to do with the issue.

Petitioner also complains that the court declined to consider as a loan to a non-member, money which the respondent deposited in other building and loan associations at interest for the benefit of its members. Likewise we say it would be anomalous to treat as a loan made in the ordinary course of business a sum of money which one has deposited to his own credit in some institution. The criticism is frivolous. In Finding VII (Rec., 9) there is set forth as Item 10 of the assets the amounts deposited in other building associations during each of the years in question; and what do they amount to? Not in one year do they equal as much as 2 per cent of the assets of the association. Moreover, it has nothing to do with the matter of exemption.

Finally, petitioner complains that the court below has failed to make other findings of fact which would fortify the position of the Government. In no instance, either in the petition or in the brief, has there been indicated how any of these matters complained of could in the slightest possible degree affect the issue involved and no attempt has been made to show how it affects the interpretation of the statute.

The paraphrasing of percentages contained in petitioner's brief, on pages 5 and 6, results from a set-up which is not in accordance with any of the facts in the case, either as found by the court or as contained in the record anywhere. As far as they concern the issues involved, they seem to be meaningless and only serve to perhaps "muddy the water."

Reference is made on page 8 of petitioner's brief to three cases to support his contention that a Federal tax law may not be abridged by force of a local statute. There is no such issue in this case. The merest glance at the cases cited indicates their irrelevancy.

Reference is also made to the case of Eversmann *vs.* Schmitt, 53 Ohio State, 174, in respect of what constitutes a building and loan association, bearing particularly upon the matter of making loans. This case was decided in the Ohio court in 1892, at a time when under the State law these associations were not permitted to make loans or accept deposits from non members. As hereinabove stated, this law was changed in 1908, prior to the passage of any of these revenue acts, and ever since such loans and deposits have been specifically authorized. The decision, therefore, is not authority in that State subsequent to the year 1908.

On page 9 there is also cited Lilley Building & Loan Company *vs.* Miller, 280 Fed., 143, involving the 1918 Act. A glance at that case shows, not only that the decision was unsound as found by the Court of Claims, but that it involved a situation wherein the facts were quite eccentric. Only four-tenths of one per cent of its loans were made to members being the outstanding feature. The court held that that associa-